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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/857,347	01/04/2002	Eric Sitbon	P07245USOO/DEJ	3171
881	7590	04/06/2004	EXAMINER	
STITES & HARBISON PLLC 1199 NORTH FAIRFAX STREET SUITE 900 ALEXANDRIA, VA 22314			BRITTAIN, JAMES R	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 04/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/857,347

Applicant(s)

SITBON, ERIC

Examiner

James R. Brittain

Art Unit

3677

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1,3-43 and 45-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-25,34-40,45 and 47-49 is/are allowed.
- 6) ☒ Claim(s) 26 is/are rejected.
- 7) ☒ Claim(s) 27-33,41-43 and 46 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Priority***

The French priority document has been matched with this application and the requirements to establish priority have been met.

### ***Allowable Subject Matter***

The indicated allowability of claim 26 is withdrawn in after further review of the reference to Ellis (US 2389298). Rejection(s) based on Ellis follow.

Claims 1, 3-25, 34-40, 45 and 47-49 are allowed.

Claims 42 and 43 would be allowable if rewritten to overcome the objection identified below.

Claims 27-33, 41 and 46 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims.

### ***Claim Objections***

Claims 42 and 43 are objected to because of the following informalities: The term "the sheath" (claim 42, line 2) lacks clear antecedent basis because claim 1 includes two sheaths. Claim 43 is objected to because it depends from an objected to claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3677

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 26 is rejected under 35 U.S.C. §102(b) as being clearly anticipated by Ellis (US 2389298).

Ellis (figures 10, 11) teaches a device for holding together, adjusting fitting or fastening parts of a garment (page 2, col. 2, lines 54-73) comprising: a first part 11B containing several sheaths in the form of pockets defined by stitching 29 having a magnet 12BB inserted in each sheath, the magnet being slidable inside the sheath; a second part 11A containing a second magnet 12AA subject or submitted to the magnetic attraction of the first magnet, wherein the first and second part are used to hold together, adjust, fit or fasten the garment when activated by a user by placing them together, a multitude of adjustments or alterations being possible through the sliding of the first magnet in the sheath and there is a means to activate the movable magnetic element remotely through the elastic system comprising the elastic band 30 connected to the movable magnetic 12BB so as to move the magnet within the sheath. The elastic band is secured at its end 31 by stitches outside of the sheath and is therefore considered remotely activated. This falls within the scope of the means plus function limitation as an equivalent structure because it performs the remote activation through its remote attachment site 31 and its elastic properties. Applicant includes an elastic traction system as a remote activation system.

### ***Response to Arguments***

In regard to the rejection of claim 26, dependent claims 32 and 33 further modifies claim 26 by narrowing it by indicating the use of an elastic traction system connected to the movable magnet and passing through the sheath. While claim 32, includes the system for locking the traction system in one or more preset positions and there is no modification to modify Ellis to

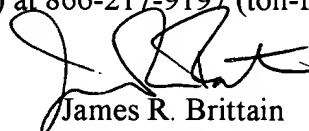
Art Unit: 3677

have such structure, the use of a non-locking elastic remote activation system is taught by Ellis. Dependent claims 32 and 33 indicate the scope of the means to activate the first movable magnet remotely by showing explicitly that it includes elastic elements.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is 703-308-2222. The examiner can normally be reached on M, W & F 5:30-1:30, T 5:30-2:00 & TH 5:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB